

United States<sup>10</sup>

# Circuit Court of Appeals

For the Ninth Circuit.

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GONG SIC OR,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration,  
Port of San Francisco,

Appellee.

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## Transcript of Record.

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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

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FILED

SEP 28 1921

F. D. MONCKTON,  
CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Assignment of Errors .....	14
Certificate of Clerk U. S. District Court to Original Exhibits .....	22
Certificate of Clerk U. S. District Court to Transcript on Appeal .....	19
Citation .....	20
Demurrer to Petition for Writ of Habeas Cor- pus .....	9
Hearing on Demurrer .....	10
Minutes of Court May 28, 1921—Hearing on Demurrer .....	10
Names and Addresses of Attorneys of Record..	1
Notice of Appeal .....	12
Order Allowing Petition for Appeal and Re- leasing on Bond .....	16
Order Sustaining Demurrer to Petition for Writ of Habeas Corpus .....	11
Order to Show Cause .....	8
Petition for Appeal .....	13
Petition for Writ .....	2
Praecipe for Transcript of Record.....	1
Stipulation and Order Respecting Withdrawal of Immigration Record .....	18



## **Names and Addresses of Attorneys of Record.**

For Petitioner and Appellant:

JOSEPH P. FALLON, Esq., Hearst Bldg.,  
S. F., Cal.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-  
cisco, Calif.

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In the Southern Division of the United States Dis-  
trict Court, for the Northern District of Cali-  
fornia, First Division.

No. 17,157.

In the Matter of GONG SIC OR, on Habeas  
Corpus—#19729/32-2 SS. "Tjikembang,"  
November 26, 1920.

## **Praeipie for Transcript of Record.**

To the Clerk of said Court:

Sir: Please make copies of the following papers  
to be used in preparing transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer to petition.
4. Minute order regarding immigration record.
5. Judgment and order dismissing order to show  
cause and denying petition for writ.
6. Notice of appeal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.

10. Stipulation and order regarding immigration record.

11. Clerk's certificate.

12. Citation on appeal.

JOSEPH P. FALLON,  
Attorney for Petitioner.

[Endorsed]: Filed Aug. 27, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [1\*]

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In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex SS. "Tjikembang" 11/26/20), on Habeas Corpus.

**Petition for Writ.**

To the Honorable, United States District Judge,  
Now Presiding in the United States District Court, in and for the Northern District of California, First Division.

It is respectfully shown by the petition of the undersigned that Gong Sic Or, hereafter in this petition referred to as "the detained," is unlawfully imprisoned, detained, confined and restrained of his liberty by Edward White, Commissioner of Immigration for the Port of San Francisco, at the Immigration Station at Angel Island, County

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\*Page-number appearing at foot of page of original certified Transcript of Record.



of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit:

That it is claimed by the said commissioner that the said detained are Chinese persons and aliens not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6th, 1882, July 5th, 1884, November 3d, 1893, and April 29th, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7th, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said commissioner, [2] intends to deport the said detained away from and out of the United States to the Republic of China.

That the said commissioner claims that the said detained arrived at the Port of San Francisco on or about the 26th day of November, 1920, on the SS. "Tjikembang," and thereupon made application to enter the United States as the son of a native-born citizen thereof, and that the application of the said detained to enter the United States as a citizen thereof was denied by the said Commissioner of Immigration, and that an appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration, to the Secretary of the Department of Labor, and that the said secretary thereafter dismissed the said appeal; that it is claimed by the said commissioner that in all

of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of the said commissioner and the said secretary was taken and made by them in the proper exercise of the discretion committed to them by the statute in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner, on his information and belief, alleges that the hearing and proceedings had herein, and the action of the said commissioner, and the action of the said secretary was and is in excess of the authority committed to them by the said rules and regulations and by said statutes, and that the denial of the application of the said detained to enter the United States as the son of a native-born citizen thereof was and in an abuse of the authority committed to them by the said statutes in each of the following particulars hereinafter set forth: [3]

Your petitioner alleges upon his information and belief that the evidence presented before the immigration authorities upon the application of the said detained to enter the United States, which said evidence is now hereby referred to with the same force and effect as if set forth in full herein, was of such a conclusive kind and character establishing the birth of the father of the detained within the United States and hence showing the said detained to be the son of a native-born citizen thereof, and which said evidence was of such legal weight and sufficiency that it was an abuse of discretion on the

part of the said commissioner and the said secretary to deny the said detained the right to admission into the United States and instead thereof to refuse to be guided by said evidence, and the said adverse action of the said commissioner and the said secretary was, your petitioner alleges upon his information and belief, arrived at and was done in denying the said detained the fair hearing and consideration of his case to which he was entitled. Said action was done in excess of the discretion committed to the said secretary and to the said Commissioner of Immigration. And your petitioner further alleges upon his information and belief, that the said action of the said secretary and the said commissioner was influenced against the said detained and against his witnesses solely because of their being of the Chinese race.

That your petitioner has not in his possession any part or parts of the said proceedings had before the said commissioner and the said Secretary of Labor for the reason that your petitioner has just received telegraphic advice of the dismissal of the said appeal, and the copy of the said records, formerly in the possession of the attorney for the said detained, is now [4] in the mails en route from Washington, D. C., to San Francisco; and it is for said reason impossible for your petitioner to annex hereto any part or parts of said immigration records; but your petitioner alleges his willingness to incorporate, and have considered as part and parcel of his petition, the said immigration record when the same shall have been received from the

Secretary of Labor, at Washington, and shall have it presented to this Court at the hearing to be had thereon.

That it is the intention of the said commissioner to deport the said detained out of the United States and away from the land of which he is a citizen by the SS. "Tjisondari," sailing from the port of San Francisco upon the 2d day of April, 1921, at 1 P. M., and unless this Court intervenes to prevent said deportation, the said detained will be deprived of residence within the land of his birth.

That the said detained is in detention as aforesaid, and for said reason is unable to verify this said petition upon his own behalf, and for said reason petition is verified by your petitioner, but for and as the act of the said detained.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said commissioner, commanding and directing him to hold the body of the said detained within the jurisdiction of this Court, and to present the body of the said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that the said detained may be restored to his liberty and go hence without day. [5]

(Chinese Characters) GONG BING.

Dated: San Francisco, Calif., April 1st, 1921.

GEO. A. McCOWAN,

Attorney for Petitioner, Bank of  
Italy Bldg., San Francisco,  
California. [6]

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

The undersigned, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are herein stated on his information and belief, and as to those matters he believes it to be true.

(Chinese Characters) GONG BING.

Subscribed and sworn to before me this 1st day of April, 1921.

[Seal]

R. H. JONES,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Apr. 1, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [7]

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In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex. SS. "Tjikembang" 11/26/20), on Habeas Corpus.

**Order to Show Cause.**

Good cause appearing therefor, and upon reading the verified petition on file herein,—

IT IS HEREBY ORDERED that Edward White, Commissioner of Immigration for the Port of San Francisco, appear before this court on the 9th day of April, 1921, at the hour of 10 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued as herein prayed for; and that a copy of this order be served upon the said commissioner.

AND IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of the said commissioner or the Secretary of Labor, shall have the custody of the said Gong Sic Or, are hereby ordered and directed to retain the said Gong Sic Or within the custody of the said Commissioner of Immigration, and within the jurisdiction of this court until its further order herein.

Dated, San Francisco, California, April 1st, 1921.

WM. H. HUNT,

United States District Judge.

[Endorsed]: Filed Apr. 1, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [8]



In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR, on Habeas Corpus.

**Demurrer to Petition for Writ of Habeas Corpus.**

Comes now the respondent, Edward White, Commissioner of Immigration, at the Port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause, and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle the petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

FRANK M. SILVA,  
United States Attorney,  
BEN. F. GEIS,  
Asst. United States Attorney,  
Attorneys for Respondent.

[Endorsed]: Filed May 28, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [9]

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At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Saturday, the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable, MAURICE T. DOOLING, Judge.

No. 17,157.

In the Matter of GONG SIC OR, on Habeas Corpus.

**Minutes of Court—May 28, 1921—Hearing on Demurrer.**

This matter came on regularly this day for hearing of order to show cause as to issuance of a writ of habeas corpus herein. Geo. A. McGowan, Esq., was present as attorney for petitioner and detained. P. A. Robbins, Esq., was present for and on behalf of respondent, and filed demurrer to petition and also presented the immigration records, which, after hearing Mr. McGowan, the Court ordered filed as Respondent's Exhibits "A," "B" and "C," and that same be considered as part of the original petition. After argument by respective attorneys, the Court ordered said matter submitted. [10]



In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR, on Habeas Corpus.

**(Order Sustaining Demurrer to Petition for Writ of Habeas Corpus.)**

GEORGE A. McGOWAN, Esq., Attorney for Petitioner.

FRANK M. SILVA, Esq., United States Attorney, and BEN. F. GEIS, Esq., Assistant United States Attorney, Attorneys for Respondent.

**ON DEMURRER TO PETITION FOR WRIT OF HABEAS CORPUS.**

The demurrer to the petition for a writ of habeas corpus herein is sustained and the petition denied.

June 27th, 1921.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jun. 27, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk [11]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex. SS. "Tjikembang" Nov. 26, 1920), on Habeas Corpus,

**Notice of Appeal.**

To the Clerk of the Above-entitled Court and to the Hon. FRANK SILVA, United States Attorney for the Northern District of California:

You and each of you will please take notice that Gong Sic Or, the petitioner and the detained above named, does hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, from the order and judgment made and entered herein on the 27th day of October, A. D. 1920, sustaining the demurrer to and in denying the petition for a writ of habeas corpus filed herein.

Dated at San Francisco, California, July 1st, 1921.

GEO. A. McGOWAN,

Attorney for Petitioner and Appellant Herein. [12]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex, SS. "Tjikembang," Nov. 26, 1920), on Habeas Corpus.

### **Petition for Appeal.**

Now comes Gong Sic Or, the petitioner, the detained and the appellant herein, and says:

That on the 27th day of October, 1920, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, this appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States, for the Ninth Circuit thereof, for the correction of the errors so complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof; and further, that the said detained may remain upon bail during the pendency of the appeal herein, upon the bond previously

given before a commissioner of this court, in the sum of one thousand dollars conditioned that he will return and surrender himself in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, July 1st, 1921.

GEO. A. McGOWAN,  
Attorney for the Petitioner and Appellant  
Herein. [13]

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In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32 Ex.  
SS. "Tjikembang" Nov. 26, 1920), on  
Habeas Corpus.

**Assignment of Errors.**

Comes now Gong Sic Or, by his attorney, Geo. A. McGowan, Esq., in connection with his petition for an appeal herein, assign the following errors which he avers occurred upon the trial or hearing of the above-entitled cause, and upon which he will rely, upon appeal to the Circuit Court of Appeals, for the Ninth Circuit, to wit:

FIRST. That the Court erred in sustaining the demurrer to, and in denying the petition for a writ of habeas corpus herein.

SECOND. That the Court erred in holding that it had no jurisdiction to issue a writ of habeas corpus, as prayed for in the petition herein.

THIRD. That the Court erred in sustaining the demurrer and in denying the petition of habeas corpus herein and remanding the petitioner to the custody of the immigration authorities for deportation.

FOURTH. That the Court erred in holding that the allegations contained in the petition herein for a writ of habeas corpus and the facts presented upon the issue made and joined herein were insufficient in law to justify the discharge of the petitioner from custody as prayed for in said petition. [14]

FIFTH. That the judgment made and entered herein is contrary to law.

SIXTH. That the judgment made and entered herein is not supported by the evidence.

SEVENTH. That the judgment made and entered herein is contrary to the evidence.

WHEREFORE, the appellant prays that the judgment and *order the* Southern Division of the United States District Court for the Northern District of the State of California, First Division, made and entered herein in the office of the Clerk of the said Court on the 27th day of October, 1920, discharging the order to show cause, sustaining the demurrer and in denying the petition for a writ of habeas corpus, be reversed, and that this cause be remitted to the said lower court with instructions to discharge the said Gong Sic Or from

custody, or grant him a new trial before the lower court, by directing the issuance of the writ of habeas corpus as prayed for in said petition.

Dated at San Francisco, California, July 1st, 1921.

GEO. A. McGOWAN,

Attorney for Petitioner and Appellant.

[Endorsed]: Receipt of a copy of the within notice of and petition for allowance of an appeal and assignment of errors admitted July 2, 1921.

FRANK M. SILVA,

U. S. Atty.

Filed July 2, 1921. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [15]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex. SS. "Tjikembang" Nov. 26, 1920), on Habeas Corpus.

**Order Allowing Petition for Appeal (and Releasing on Bond).**

On this 2d day of July, 1921, comes Gong Sic Or, the detained herein, by his attorney, Geo. A. McGowan, Esq., and having previously filed herein, did present to this Court, his petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit

intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court hereby allows the appeal herein prayed for, and orders execution and remand stayed pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit, that the appellant may remain at large upon bond in the sum of One Thousand Dollars (\$1000.00), previously given and accepted herein, and that he remain within the United States, and render himself in execution of whatever judgment is finally entered herein at the termination of said appeal.

Dated at San Francisco, California, July 2d, 1921.

M. T. DOOLING,

United States District Judge. [16]

[Endorsed]: Receipt of a copy of the within order is hereby admitted this 2d day of July, 1921.

FRANK M. SILVA,

U. S. Atty.

Filed July 2, 1921. W. B. Maling, Clerk. By  
T. L. Baldwin, Deputy Clerk. [17]



In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 17,157.

In the Matter of GONG SIC OR (19729/32-2 Ex. SS. "Tjikembang," November 26, 1920)—on Habeas Corpus.

**Stipulation and Order Respecting Withdrawal of Immigration Record.**

It is hereby stipulated and agreed by and between the attorney for the petitioner and appellant herein and the attorney for the respondent and appellee herein, that the original immigration record in evidence and considered as part and parcel of the petition for a writ of habeas corpus upon hearing of the demurrer in the above-entitled matter, may be withdrawn from the files of the Clerk of the above-entitled court and filed with the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit, there to be considered as a part and parcel of the record on appeal in the above-entitled case with the same force and effect as if embodied in the transcript of the record, and so certified to by the clerk of the court.

Dated: San Francisco, California, August 26th, 1921.

FRANK M. SILVA,  
Attorney for Respondent and Appellee.

JOSEPH P. FALLON,  
Attorney for Petitioner and Appellant. [18]



Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration record therein referred to may be withdrawn from the office of the clerk of this court and filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by this Court.

Dated: San Francisco, California, August 26th, 1921.

FRANK H. RUDKIN,  
United States District Judge.

[Endorsed]: Filed Aug. 27, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [19]

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**Certificate of Clerk U. S. District Court to Transcript  
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true, and correct transcript of certain records and proceedings in the Matter of Gong Sic Or, on Habeas Corpus, No. 17,157, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the

sum of Seven Dollars and Fifteen Cents (\$7.15), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal issued herein (page 21).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 17th day of September, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk. [20]

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**Citation.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and FRANK M. SILVA, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Gong Sic Or is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be cor-

rected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. RUDKIN, United States District Judge for the Northern District of California, this 27th day of August, A. D. 1921.

FRANK H. RUDKIN,  
United States District Judge. [21]

Receipt of a copy of the within is hereby acknowledged this 27th day of August, 1921.

FRANK M. SILVA,  
Atty. for Appellee.

[Endorsed]: No. 17,157. United States District Court for the Northern District of California. Gong Sic Or, Appellant, vs. Edward White, Commissioner of Immigration, Appellee. Citation on Appeal. Filed Aug. 27, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

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[Endorsed]: No. 3774. United States Circuit Court of Appeals for the Ninth Circuit. Gong Sic Or, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed September 17, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

**Certificate of Clerk U. S. District Court to Original Exhibits.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the accompanying exhibits (three in number) known as, and marked:

Respondent's Exhibit "A" (Immigration Records)		
Respondent's Exhibit "B"	"	"
Respondent's Exhibit "C"	"	"

—are the original exhibits introduced and filed in the Matter of Gong Sic Or, on Habeas Corpus, No. 17,157, and are transmitted herewith in accordance with a stipulation and order of this Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 17th day of September, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk.

[Endorsed]: No. 17,157. In the Southern Division of the U. S. District Court, Northern District of California, First Division. In the Matter of Gong Sic Or on Habeas Corpus. Certificate of Clerk U. S. District Court to Original Exhibits.

No. 3774. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sept. 19, 1921. F. D. Monckton, Clerk.